IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.417 of 2007

Commissioner of Income Tax,
Chennai. ..Appellant

Vs

M/s.A.K.Daga & Sons,
122, Broadway,
Chennai-108. ..Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai 'A' Bench, Chennai in I.T.A. No.1441/Mds/2004 dated 14.07.2006 for the assessment year 1998-99 against the order of the Commissioner of Income Tax, Chennai-34 dated 24.3.2004 and made ITA No.19/2001-2002 GI No./P.A.No.12203.D Assessment Year 1998-99.

For Appellant : Mr.J.Naresh Kumar,
Standing Counsel for
Income-tax Department

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Chennai 'A' Bench, Chennai in I.T.A. No.1441/Mds/2004 dated 14.07.2006 raising the following substantial questions of law:-

1. Whether under the facts and circumstances of the case the Tribunal was right in holding that the amount claimed by the assessee as received on account of sale of jewellery cannot be brought to tax u/s 68 when the assessee had not adduced any evidence of the sale?

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2. Whether the Tribunal was right in holding that the sale was not disputed by the assessing officer, when it is clear from the assessment order that it was not accepted by the assessing officer and treated as a sham transaction by him?

2. The facts leading to the above substantial questions of law are as under:

The assessee is a H.U.F. The nature of the business of the assessee is money lending. The relevant assessment year is 1998-99 and the corresponding accounting year ended on 31.03.1998. The assessee had returned income from money lending. The total income of Rs.1,36,180/- has been disclosed in the Return. The assessment was completed under Section 143(3) of the Income-tax Act ("Act" in short) determining a total income at Rs.8,37,967/-. While completing the assessment, the Assessing Officer treated the amount of Rs.7,01,787/- as unexplained cash credit under Section 68 of the Act. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) allowed the appeal. Aggrieved, the Revenue filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal dismissed the Revenue's appeal and confirmed the order of C.I.T.(A). Hence the present tax case is filed by the Revenue.

3. Learned Standing Counsel appearing for the Revenue submitted that the assessee has not proved the sale of jewellery to its family members and hence the funds introduced is without proper explanation and hence the addition made by the Assessing Officer is justified.

4. Heard the counsel. During the year under consideration, the assessee has introduced funds into accounts for sale of gold (Rs.3,66,800/-) and silver (Rs.3,34,987/-). The above items were disclosed under VDIS Scheme. The C.I.T. issued a Certificate that the assessee has paid tax under VDIS Scheme. Subsequently, the jewellery declared under VDIS Scheme was sold to family members which resulted in capital loss of Rs.54,307/-. The amount of Rs.7,01,787/- was shown as receipt from family members on account of sale of gold and silver jewellery. It is seen from the records that the assessee had filed affidavits from the buyers and also the detailed description of purchases and its valuation at the time of VDIS Scheme. The declaration of the articles under VDIS Scheme was not disputed by the Revenue. Further it is seen from the records that the sale consideration was not disputed by the Assessing Officer. The Assessing Officer cannot ignore the transactions and the resultant gain or loss out of it. In this case there is a loss. The assessee had already explained the nature and source of credits with supporting evidences. The authorities below have given a finding that the Assessing Officer, except describing it as a sham transaction, had not brought any additional evidence to support his contention. The addition made under Section 68 of the Act as

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unexplained cash credit is not based on any material or evidence. Both the first appellate authority as well as the Tribunal have given a finding that there is no material brought on record to suggest that the transaction was sham and hence it was held that the sum received on account of sale of jewellery could not be brought to tax under Section 68 of the Act. The concurrent findings given by both the authorities below are based on valid materials and evidence. Recently, the Supreme Court in the case of Commissioner of Income-tax Vs. P.Mohanakala (291 ITR 278), held that whenever there is a concurrent factual finding by the authorities below, the same should be accepted and no interference should be called for by the High Court. Under these circumstances, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference.

5. In view of the foregoing reasons, no substantial questions of law arise for consideration of this Court and accordingly, the tax case is dismissed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Chennai "A" Bench,
   Chennai.

2. The Assistant Registrat Income Tax Appellate Tribunal
III rd Floor, Rajaji Bhavan, Besant Nagar, Madras-90. (5 copies)

3. The Secretary,
   Central Board of Direct Taxes,
   New Delhi.

4. The Commissioner of Income-tax (Appeals) IX,
   Chennai-34.

5. The Deputy Commissioner of Income-tax,
   City Circle IV(Inv), Chennai-34.

1 cc to Mr. Pushya Sitaraman, SVSC, Sr. No.31670

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